

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al;)	
)	CIVIL ACTION
)	FILE NO: 1:17cv02989-AT
Plaintiffs,)	
)	
v.)	
)	
BRIAN P. KEMP, et al.;)	
)	
Defendants)	
_____)	

**FULTON COUNTY DEFENDANTS' POSITION REGARDING
PRODUCTION OF FULTON COUNTY NOVEMBER 3, 2020 ELECTION
FILES**

COMES NOW, Fulton County Defendants, and as provided by the Court, files this Statement of their Position Regarding Production of Fulton County's November 3, 2020 Election Files [Doc. 1215] as follows:

This discovery dispute stems from Coalition Plaintiffs' Request for Production of Documents No. 26, which requests:

All election project files created by the Dominion EMS from the November 2020 Election original count and recount, including Cast Vote Records exported in the JSON format.

Pursuant to this request, Coalition Plaintiffs claim that Fulton County Defendants have not provided:

- (i) Election Project ballot images from in-person voting for the official original vote tallies;*
- (ii) a full set of Election Project ballot images for the presidential contest recount;*
- (iii) complete Election Project files for both the original count and recount; and*
- (iv) cast vote records exported in JSON format for both the original count and recount.*

Fulton County Defendants' Position

As Coalition Plaintiffs state, and as previously conveyed to the Coalition Plaintiffs, the Fulton County Defendants are not in possession of ballot images for the 2020 Election, as those documents were not preserved. However, to the extent allowed by the Georgia Election Code, Fulton County Defendants have provided the other documents sought by this request.

Counsel for the Coalition Plaintiffs, their client Marilyn Marks, and counsel for Fulton County Defendants have conferred on this request on numerous occasions. During these discussions, counsel for Fulton County advised Coalition counsel and Ms. Marks that documents in JSON format could not be accessed without the Dominion EMS software, which is proprietary and cannot be provided by Fulton County Defendants.

Further, the Secretary of State, through counsel, has instructed Georgia counties not to provide JSON files, pursuant to O.C.G.A. §21-2-379.24. (*See* Exhibit A attached hereto). Fulton County Defendants made Coalition Plaintiffs' counsel aware of this direction by counsel for the Secretary of State. Subsequently, Fulton County Defendants provided electronic copies of ballot images for the November 2, 2020 Recount, pursuant to the guidance given by the Secretary of State.

Fulton County Defendants state that they cannot provide the requested documents in JSON format without violating the Georgia Election Code, as directed by the Secretary of State's Office. Accordingly, the Fulton County Defendants request that this Court deny Coalition Plaintiffs' Motion.

Respectfully submitted, this 16th day of November 2021.

OFFICE OF THE FULTON COUNTY ATTORNEY

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CERTIFICATE OF SERVICE AND COMPLIANCE

THIS IS TO CERTIFY that on this day, a copy of the forgoing was filed electronically with the Clerk of Court using the CM/ECF system, with the Clerk of Court using the CM/ECF system, which will send email notification of such filing to all attorneys of record. In addition, pursuant to LR 7.1 (D), I hereby certify that the foregoing document has been prepared with the font type and margin requirements of LR 5.1, using font type Times New Roman and a point size of 14.

This 16th day of November, 2021.

/s/ David R. Lowman

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